

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 23rd OF SEPTEMBER, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO : FCT/HC/PET/299/21

BETWEEN

MRS. DAKORU ASEKUTU.....PETITIONER

AND

MR. SMART ASEKUTU.....RESPONDENT

JUDGEMENT

By the notice of petition dated 17th August, 2021 and filed on the 17th August, 2021 the petitioner herein commenced the suit against the Respondent.

And she seeks the following relief:

1. A decree of dissolution of the marriage on the ground that the marriage between the Petitioner and Respondent has broken down irretrievably.

The petition is supported by 3 paragraph verifying affidavit deposed to by Dakoru Asekutu, the Petitioner.

The Respondent was served the court processes but neither appeared nor was represented by counsel at the proceedings. The respondent also did not file an answer or anything in opposition to the petition.

The matter went on trial and the Petitioner testified as PW1. Two marriage certificates were tendered in evidence, a marriage certificate from Abuja Municipal Area Council Marriage Registry, Abuja dated 17th November, 2012 and the Peacehouse INT'L Christian Centre dated 7th December, 2012 and marked as exhibit A and B.

After the testimony of the Petitioner, her counsel urged the court to proceed to enter judgement by dissolving the marriage as prayed by petitioner.

I have considered the Petitioner's case before the court and oral submission of the petitioner's counsel. I am of the view that the issue for determination is:

Whether the petitioner has successfully established that the marriage which is subject matter of this Petition has broken down irretrievably

The Petitioner asserts that since 2017, the Respondent has wilfully and persistently refused to consummate the marriage. That the parties have lived apart for a continuous period of more than three years preceding the presentation of this petition.

It is trite law that dissolution of marriage contracted pursuant to our Marriage Law is guided by the Matrimonial Causes Act, 1970. Under the said law, a petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably. See

GABRIEL OLORUNFEMI PIUS v. BOSEDE PIUS OLORUNFEMI (2020) LPELR-49579(CA) (Pp. 9-10 paras. D) where his lordship Per SHUAIBU, J.C.A reasoned as follows:

"I have also restated the legal position that a petition under this Act by a party to a marriage for a decree of dissolution of marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably under Section 15 (2) of the Act. The Court hearing a petition for a decree of dissolution of marriage shall hold that the marriage to have broken down irretrievably if but only if the

petitioner satisfied the Court that one or more of the situations set out in Section 15 (2) (a) - (h) of the Act - has occurred."

See also

MRS. HELEN ANIOKE v. MR. BEN CHARLES ANIOKE (2011) LPELR-3774(CA) (Pp. 34 paras. B)

It is important to note that the evidence of the petitioner remains unchallenged and uncontradicted, thus same ought to be admitted and acted upon by this court. See

ALHAJI ALI BUKAR MANDARA v. ALHAJI USMAN ALI & ANOR (2017) LPELR-43433(CA) Pp. 29 paras. C).

One of the grounds upon which the petitioner has brought this petition is amply stated on the face of the petition, which is the fact that the petitioner and the respondent have lived apart for a period of more than three years. It is stated that the marriage between the Petitioner and the Respondent has broken down irretrievably because they have lived apart for a continuous period of more than three years immediately preceding the presentation of petition and the respondent has wilfully refused to consummate the marriage by denying the Petitioner her conjugal rights.

Two facts which if proved, would convince the Court that the marriage has broken down irretrievably is where the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition, and/or if the Respondent has wilfully and persistently refused to consummate the marriage and the Respondent does not object to a decree being granted. See **Section 15(2)(a) (f) of the Matrimonial Causes Act.**

And

IBRAHIM V. IBRAHIM (2007) ALL FWLR (PT. 346) 474 AT 491 PARA. G (CA) OR (2006) LPELR- 7670 P 7-9 PARA F-E
where the court reasoned as follows:

“Generally, dissolution of marriage contracted pursuant to our marriage law is guided by Matrimonial Causes Act, Cap. 220. Under the said law, a petition by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably. See Section 15 of Matrimonial Causes Act. The law also provides for the facts, one or more of which a petitioner must establish before a Court shall hold that a marriage has broken down irretrievably.

In this case, the petitioner’s oral testimony is that she got married to the respondent at the Abuja Municipal Area Council Marriage Registry, Abuja on the 17th November, 2012 and at Peace house International Christian Centre, Jabi District, Abuja on the 7th day December, 2013. This evidence was neither discredited nor challenged by any contrary evidence. This fact is supported by documentary evidence (Exhibit A and B) which are the marriage certificates in respect of the Registry marriage and the church celebration between the petitioner and the respondent. Section 86 of the Matrimonial Causes Act states that proof of marriages shall be by production of either the original or certified copy of the marriage certificate.

The petitioner also stated that the respondent has not consummated the marriage since 2017. Section 15(2)(a) and Section 21 of the Matrimonial Causes Act sets out in detail the facts for dissolution of a marriage where the respondent has wilfully refused to consummate the marriage. They provide thus:

“15(2)(a) “that the respondent has wilfully and persistently refused to consummate the marriage.”

21- “The court shall not find that a respondent has wilfully and persistently refused to consummate the marriage unless the

court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.”

See the case of **MR. ABDULAZEEZ AKINLOLU v. DR. AMINAT YEWANDE AKINLOLU (2019) LPELR-47416(CA) (Pp. 25-26 paras. B) Per SAULAWA, J.C.A**

From the facts before the court, the Petitioner has proved that the parties have lived apart for a period of more than three years and that the Respondent has deserted her for a continuous period of over three years immediately preceding the presentation of this petition.

The Petitioner has established these facts under **Section 15(2)(e) of the Matrimonial Causes Act**. The Petitioner has thus been able to convince this Court that the marriage between herself and the Respondent contracted on 17th November, 2012 has broken down irretrievably. See:

OGUNTOYINBO v. OGUNTOYINBO (2017) LPELR-42174(CA) PP 8-14 PARAS E-A

This court in the circumstance has no option but to grant the relief for dissolution of Marriage sought by the petitioner.

Consequently, it is hereby ordered:

That the marriage had and solemnized on the 17th day of November, 2012 at Abuja Municipal Area Council Marriage Registry, Abuja between the petitioner Dakoru Asekutu and the respondent Smart Asekutu shall be and is hereby dissolved on ground that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of this petitioner and the respondent does not object to a decree being granted.

Decree Nisi will issue forthwith and shall be made absolute after three months from the date hereof if there be no cause to the contrary.

Signed

Honourable Judge

Representation

V. I Uma Esq for the petitioner.